UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JORGE RODRIGUEZ, Plaintiff, -against- AMGP RESTAURANT CORP. d/b/a YIASOU ESTIATORIO and NEXT DOOR RESTAURANT, PETER KATSICHTIS, MICHAEL KATSICHTIS, and GEORGE KATSICHTIS, Defendants.	:	17-CV-4870 **COMPLAINT**

Plaintiff Jorge Rodriguez ("Plaintiff" or "Rodriguez"), by his attorneys, Pechman Law Group PLLC, complaining of defendants AMGP Restaurant Corp. d/b/a Yiasou Estiatorio ("Yiasou") and Next Door Restaurant ("Next Door"), Peter Katsichtis, Michael Katsichtis, and George Katsichtis (collectively, "Defendants"), alleges:

NATURE OF THE ACTION

1. Rodriguez worked for Defendants as a pizza maker.

2. During Rodriguez's employment, Defendants initially paid Rodriguez straight time and then at a fixed weekly salary, in both instances failing to pay him overtime compensation for the hours he worked over forty per workweek as required by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), and New York Labor Law § 190, *et seq.* ("NYLL").

3. Defendants also failed to pay Rodriguez spread-of-hours pay and provide him with wage notices or wage statements, in violation of NYLL and the New York Wage Theft Prevention Act ("WTPA").

4. Rodriguez brings this action to recover unpaid overtime wages, unpaid spread-of-hours pay, liquidated damages, pre- and post-judgment interest, attorneys' fees and costs pursuant to the FLSA, NYLL, and WTPA.

JURISDICTION

5. This Court has subject matter jurisdiction of this case pursuant to 29 U.S.C. § 216(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1337, and has supplemental jurisdiction over Plaintiff's claims under the NYLL pursuant to 28 U.S.C. § 1367.

VENUE

6. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391, because all events giving rise to this action and alleged in the Complaint occurred at Yiasou and Next Door, which are located, and operated by Defendants, in the Eastern District of New York.

THE PARTIES

Plaintiff

7. Rodriguez resides in Brooklyn, New York.

8. Defendants employed Rodriguez as a pizza maker at Yiasou and Next Door from April 2015 to April 30, 2017.

Corporate Defendants

9. Defendant AMGP Restaurant Corp. ("AMGP") is a New York corporation that owns, operates, and does business as both Yiasou, a Greek restaurant located at 2003 Emmons Avenue, Brooklyn, New York 11235, and Next Door, an Italian restaurant located at 2005 Emmons Avenue, Brooklyn, New York 11235.

10. AMGP has employees engaged in interstate commerce or in the production of goods for interstate commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for interstate commerce by any person.

11. AMGP had an annual gross volume of sales in excess of $500,000 in 2015 and 2016.

12. AMGP is projected to have an annual gross volume of sales in excess of $500,000 in 2017.

13. AMGP is an "enterprise engaged in interstate commerce" within the meaning of the FLSA.

Defendant Peter Katsichtis

14. Peter Katsichtis ("Peter") is the chief executive officer, owner and principal of AMGP Restaurant Corp.

15. Throughout Rodriguez's employment, Peter had and exercised the authority to hire and fire employees, direct the manner in which employees performed their daily duties and assignments, and establish and implement the pay practices and work and scheduling policies at both Yiasou and Next Door.

16. For example, Peter hired Rodriguez in 2015 and informed him of his pay rate at the time of his hiring.

17. Peter was regularly present at Yiasou and Next Door to review business documents.

18. Peter is an "employer" within the meaning of the FLSA and NYLL.

Defendant Michael Katsichtis

19. Michael Katsichtis ("Michael") is an owner of AMGP Restaurant Corp. and a manager of both Yiasou and Next Door.

20. Throughout Rodriguez's employment, Michael had and exercised the authority to hire and fire employees, direct the manner in which employees performed their daily duties and assignments, and establish and implement the pay practices and work and scheduling policies at Yiasou and Next Door.

21. For example, Michael distributed Rodriguez's pay and set the schedules for workers at Yiasou and Next Door.

22. Michael was regularly present at Yiasou and Next Door.

23. Michael is an "employer" within the meaning of the FLSA and NYLL.

Defendant George Katsichtis

24. George Katsichtis ("George") is an owner of AMGP Restaurant Corp. and a manager of both Yiasou and Next Door.

25. Throughout Rodriguez's employment, George had and exercised the authority to hire and fire employees, direct the manner in which employees performed their daily duties and assignments, and establish and implement the pay practices and work and scheduling policies at Yiasou and Next Door.

26. For example, George distributed Rodriguez's pay and set the schedules for workers at Yiasou and Next Door.

27. George was regularly present at Yiasou and Next Door.

28. George is an "employer" within the meaning of the FLSA and NYLL.

FACTUAL ALLEGATIONS

29. From approximately April 2015 to April 30, 2017, Defendants employed Rodriguez as a pizza maker at Yiasou and Next Door.

30. Yiasou and Next Door are located next to each other, and share a single kitchen and its kitchen staff.

31. Yiasou and Next Door have the same hours of operation. Both are open Sunday through Thursday, 12:00 p.m. to 11:00 p.m., and Friday and Saturday from 12:00 p.m. to 12:00 a.m.

32. From the start of his employment in April 2015 to approximately April 2016, Rodriguez worked a regular schedule for Yiasou and Next Door of Sunday through Thursday, from 12:00 p.m. to 11:00 p.m., and Friday and Saturday, from 12:00 p.m. to 12:00 a.m.

33. From approximately April 2015 to April 2016, Rodriguez typically received an uninterrupted 30-minute meal break four days per workweek, and therefore worked an approximate total of 77 hours per workweek.

34. From approximately April 2016 to the end of his employment, Rodriguez worked a regular schedule of Sunday and Tuesday through Thursday, from 12:00 p.m. to 11:00 p.m., and Friday and Saturday, from 12:00 p.m. to 10:00 or 11:00 p.m.

35. From approximately April 2016 to the end of his employment, Rodriguez typically received an uninterrupted 30-minute meal break each day he worked, and therefore worked an approximate total of 61 to 63 hours per workweek.

36. From the start of his employment through approximately December 2015, Defendants paid Rodriguez approximately $13 per hour, including hours worked over forty per workweek.

37. From approximately January 2016 through approximately April 2016, Defendants paid Rodriguez approximately $15 per hour, including hours worked over forty per workweek.

38. After Rodriguez began working six days per week, from approximately April 2016 through the end of his employment, Defendants paid Rodriguez a fixed weekly salary of $1,000, regardless of the actual number of hours he worked per week.

39. Defendants required Rodriguez to sign documents that inaccurately reflected the number of hours he worked before receiving his pay and kept a false set of pay records reflecting an hourly pay rate of $10 in 2016 and $11 in 2017.

40. Defendants did not pay Rodriguez at the rate of one and one-half times his hourly wage rate for hours worked in excess of forty per workweek.

41. Defendants did not compensate Rodriguez with one hour's pay at the basic minimum hourly wage rate for each day his shift exceeded ten hours.

42. Defendants paid Rodriguez his wages weekly in cash, without accompanying accurate wage statements including, *inter alia*, Rodriguez's regular and overtime hourly rates of pay and hours worked.

43. Defendants did not furnish Rodriguez with wage notices at the time of his hiring or whenever there was a change in his wage rate.

FIRST CLAIM
(Fair Labor Standards Act – Unpaid Overtime)

44. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

45. Defendants are employers within the meaning of the FLSA.

46. Throughout his employment, Rodriguez was engaged in interstate commerce or in the production of goods for commerce on behalf of Defendants.

47. Rodriguez is a non-exempt "employee" within the meaning of the FLSA.

48. Defendants were required to pay Plaintiff one and one-half (1½) times his regular hourly wage rate for all hours worked in excess of forty hours in a workweek pursuant to the overtime wage provisions of 29 U.S.C. § 207 *et seq*.

49. Defendants failed to pay Plaintiff the overtime wages to which he was entitled under the FLSA.

50. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay Plaintiff overtime wages.

51. Due to Defendants' violations of the FLSA, Plaintiff is entitled to recover his unpaid overtime wages, liquidated damages, reasonable attorneys' fees, costs of the action, and pre- and post-judgment interest.

SECOND CLAIM
(New York Labor Law – Unpaid Overtime)

52. Plaintiff repeats and realleges all foregoing paragraphs as if set forth

herein.

53. Rodriguez is a non-exempt "employee" within the meaning of the NYLL.

54. Under New York State Department of Labor ("NYDOL") regulations, including 12 N.Y.C.R.R. §§ 137-1.3, 146-1.4, defendants were required to pay Plaintiff one and one half (1½) times his regular hourly wage rate for all hours that he worked in excess of forty per workweek.

55. Defendants failed to pay Plaintiff the overtime wages to which he was entitled under the NYLL and its supporting regulations.

56. Defendants willfully violated the NYLL and its supporting regulations by knowingly and intentionally failing to pay Plaintiff overtime wages.

57. Due to Defendants' willful violations of the NYLL and supporting New York State Department of Labor Regulations, including, but not limited to, 12 N.Y.C.R.R. Part 146, Plaintiff is entitled to recover his unpaid overtime wages, reasonable attorneys' fees, costs of the action, liquidated damages, and pre- and post-judgment interest.

THIRD CLAIM
(New York Labor Law – Spread-of-Hours Pay)

58. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

59. Defendants willfully failed to pay Plaintiff additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which Plaintiff's shifts spread over more than ten hours.

60. By defendants' failure to pay Plaintiff spread-of-hours pay, Defendants willfully violated Section 650 *et seq.* of the NYLL and its supporting NYDOL regulations, including, but not limited to, 12 N.Y.C.R.R. §§ 137-1.7, 137-3.10, and 146-1.6.

61. Due to Defendants' willful violations of the NYLL, Plaintiff is entitled to recover an amount prescribed by statute as unpaid spread-of-hours pay, liquidated damages, reasonable attorneys' fees, costs of the action, and pre- and post-judgment interest.

FOURTH CLAIM
(New York WTPA – Failure to Provide Wage Notices)

62. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

63. The WTPA, as incorporated into the NYLL, as well as the NYLL's interpretative regulations, such as but not limited to 12 N.Y.C.R.R. Part 146, require employers to provide each employee with a written notice of his or her wage rate, in the employee's native language, at the time of hire and whenever there is a change to the employee's rate of pay.

64. In violation of NYLL § 191, Defendants failed to furnish Plaintiff, at the time of hiring and whenever there was a change to rates of pay, with wage notices containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer, and anything otherwise required by law; in violation of the NYLL § 195(1).

65. Due to Defendants' violation of NYLL § 195(1), Plaintiff is entitled to recover from Defendants liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to the NYLL § 198(1-b).

FIFTH CLAIM
(NYLL Wage Theft Prevention Act – Failure to Provide Wage Statements)

66. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

67. The NYLL and WTPA require employers to provide employees with an accurate wage statement each time they are paid.

68. Throughout Plaintiff's employment with Defendants, Defendants paid Plaintiff without providing a wage statement at the end of every pay period accurately listing, *inter alia*: the regular and overtime rate or rates of pay; the number of regular and overtime hours worked per pay period; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages, in violation of the NYLL § 195(3).

69. Due to Defendants' violation of NYLL § 195(3), Plaintiff is entitled to recover from Defendants liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to the NYLL § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

a. declaring that Defendants have violated the overtime wage provisions of the FLSA, NYLL, and NYDOL regulations;

b. declaring that Defendants have violated the spread-of-hours pay provisions of the NYLL and NYDOL regulations;

c. declaring that Defendants have violated the notice and record-keeping provisions of the FLSA, NYLL and WTPA;

d. declaring that Defendants willfully violated the FLSA and NYLL;

e. enjoining future violations of the FLSA and NYLL by Defendants;

f. awarding Plaintiff damages for unpaid overtime wages;

g. awarding Plaintiff damages for unpaid spread-of-hours wages;

h. awarding Plaintiff liquidated damages in an amount equal to the total amount of the wages found to be due pursuant to the FLSA and the NYLL;

i. awarding Plaintiff statutory damages as a result of Defendants' failure to furnish Plaintiff with accurate wage statements pursuant to the NYLL and the WTPA;

j. awarding Plaintiff statutory damages as a result of Defendants' failure to furnish plaintiff with annual notices pursuant to the NYLL and the WTPA;

k. awarding Plaintiff pre-judgment interest pursuant to the NYLL;

l. awarding Plaintiff post-judgment interest as required under 28 U.S.C. § 1961(a);

m. awarding Plaintiff reasonable attorneys' fees and costs pursuant to the FLSA and the NYLL; and

n. awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 18, 2017

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